

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DARCY MATTHEW TYONE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13177
Trial Court No. 4FA-18-00890 CR

SUMMARY DISPOSITION

No. 0161 — September 30, 2020

Appeal from the District Court, Fourth Judicial District,
Fairbanks, Ben A. Seekins, Judge.

Appearances: Michael Horowitz, Law Office of Michael Horowitz, Kingsley, Michigan, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Spenser J. Ruppert, Assistant District Attorney, Fairbanks, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Wollenberg, Judge, and Mannheimer, Senior Judge.*

Following a jury trial, Darcy Matthew Tyone was convicted of fourth-degree assault based on an episode at a Fairbanks restaurant.¹ Tyone was so

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

¹ AS 11.41.230(a)(1).

intoxicated that he was asked to leave the restaurant. The jury found that Tyone grabbed one of the restaurant owners by the neck while she was escorting Tyone off the premises.

In this appeal, Tyone challenges an evidentiary ruling made by the trial judge. One of the witnesses at Tyone’s trial testified that, when the restaurant owner returned from escorting Tyone off the premises, she had a new abrasion on the skin of her neck. Over defense objection, the trial judge allowed this witness to testify that, in her experience, the type of abrasion that she observed on the restaurant owner’s neck was usually caused by “fingernails, a scrape, somebody tearing at their neck.”

Tyone argues that this testimony was not proper lay testimony — that only a witness with medical expertise could be allowed to offer testimony regarding the likely cause of the restaurant owner’s injury.

In *Carter v. State*, we explained that there are times when a lay witness may properly testify, not only about the injuries they observed, but also about the conclusions they drew regarding how those injuries were sustained.² The propriety of this testimony hinges on whether the type of injury observed, and the manner in which such an injury can be inflicted, are within common experience.³

When the likely cause of an injury is not within common knowledge — when “the chain of inference [supporting the witness’s conclusion] rests on specialized medical knowledge that is likely not shared by the trier of fact” — then a trial judge should not allow a witness to offer an opinion about the cause of the injury unless the witness has the requisite medical expertise.⁴

² *Carter v. State*, 235 P.3d 221, 224-26 (Alaska App. 2010).

³ *Id.*

⁴ *Id.* at 225.

But here, the injury was an abrasion on the skin of the victim's neck. According to the witness's testimony, the victim was uninjured when she escorted Tyone out of the restaurant, but the victim had this abrasion on her neck when she returned minutes later. And the occurrences or mechanisms that are likely to cause a sudden skin abrasion are within common knowledge.

Given all this, the trial judge could reasonably conclude that, even though the witness had no medical expertise, the witness should be allowed to offer an opinion regarding the likely physical cause of the victim's neck abrasion.

The judgment of the district court is AFFIRMED.